

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
233 RICHMOND STREET  
PROVIDENCE, RHODE ISLAND 02903**

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**IN THE MATTER OF:**

**2004 LINCOLN PARK RACING DATES REQUEST**

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**DBR No.: 03-R&A-0251**

**RECOMMENDATIONS AND ORDER**

**I.     INTRODUCTION**

This matter came before the Department of Business Regulation (“Department”) on December 3, 2003 pursuant to R.I. Gen. Laws §§ 41-3.1-1 *et seq.* and 42-35-1 *et seq.* An Order Appointing Hearing Officers was issued by the Director of the Department on November 25, 2003. The purpose of the hearing was to take testimony with respect to Lincoln Park, Inc.’s (“Lincoln Park”) proposed live racing schedule for calendar year 2004 pursuant R.I. Gen. Laws § 41-3.1-4(2)<sup>1</sup>.

**II.    JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 41-3.1-4. Lincoln Park is licensed as a dog racing facility pursuant to R.I. Gen. Laws § 41-3.1-1 *et seq.* and R.I. Gen. Laws § 41-9-1 *et seq.*

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<sup>1</sup> R.I. Gen. Laws § 41-3.1-4(2) states:

**Powers and duties of racing and athletics division.** – In addition to the other powers conferred upon the division, the division of racing and athletics shall carry out the provisions of this chapter, and to that end, the division may:

....

(2) Fix and set the dates within which any dog track may be operated; provided, however, there shall be at least one hundred twenty-five (125) days annually of the operation;...

### **III. ISSUES**

The issue in this matter is whether pursuant to R.I. Gen. Laws § 41-3.1-4(2) the Department should fix and set the dates within which Lincoln Park may be operated in calendar year 2004 as requested in Lincoln Park's proposed live racing schedule given the testimony and evidence presented.

### **IV. MATERIAL FACTS AND TESTIMONY**

On October 3, 2003 the Department received a letter dated September 30, 2003 from Mr. Craig Sculos in his capacity as General Manager of Lincoln Park. Attached to the September 30, 2003 letter is an attachment entitled "Lincoln Park-Proposed 2004 Greyhound Racing Schedule." The attachment sets forth a request for three hundred forty (340) live greyhound racing performances over a period of two hundred ten (210) days during calendar year 2004. As stated in the September 30, 2003 letter, the number of performances requested for 2004 is the same as that requested for 2003. In a letter dated October 30, 2003, the Department notified Mr. Sculos that a hearing concerning the 2004 racing dates request had been scheduled for December 3, 2003. A notice of the hearing was published in the *Providence Journal* on October 29, 2003.

Both testimony and documentary evidence were presented at the hearing on December 3, 2003. Hearing Officer Forte entered three (3) documents into evidence: the above-described September 30, 2003 letter from Mr. Sculos as Exhibit 1; the above referenced legal notice in the *Providence Journal* on October 29, 2003 as Exhibit 2; and a two (2) page witness sign-in sheet as Exhibit 3.

Mr. Steven Machowski, the Simulcast Publicity Manager for Lincoln Park, testified regarding the details of the racing dates request. Mr. Machowski stated that three hundred forty

(340) performances had been requested for each of the last five (5) years. Additionally, Mr. Machowski clarified that the total number of performances consisted of two hundred ten (210) matinee cards, twenty-seven (27) late afternoon cards and one hundred three (103) evening cards. Mr. Machowski testified in detail about the times and number of races for each type of card and noted the exceptions for certain dates including holidays and other exceptions.

Mr. Gary Liberatore, Director of Gaming for Lincoln Park then offered a document signed by Mr. Craig Sculos which listed: (i) Lincoln Park Racing Officials; (ii) Key Personnel of Lincoln Park; and (iii) Officers and Directors of Wembley, plc, Wembley USA, and Lincoln Park. Hearing Officer Forte confirmed receipt of the document and left the record open until December 10, 2003 at 4 p.m.

A sign-in sheet had been provided at the hearing in order to allow individuals to indicate an intent to testify. Lincoln Park employees who were present and signed in but did not testify other than as stated above included: Mr. Ray Balkus, Director of Racing for Lincoln Park, Mr. Gary Liberatore, Mr. Michael Cardello, Chief Financial Officer for Lincoln Park, and Mr. Craig Sculos. Mr. William Chalko and Mr. Richard Hodges, both from the Rhode Island Bureau of Audits, signed in to testify but did not testify.

Mr. Carey Thiel, President of an organization called Grey2k USA, testified in opposition to Lincoln Park's request. Mr. Thiel testified that Grey2k USA is a national non-profit greyhound protection organization based in Boston, Massachusetts. Mr. Thiel further testified that Grey2k USA chairs the National Greyhound Legislative Coalition which is comprised of Grey2k USA, the American Society for the Prevention of Cruelty to Animals and the Humane Society of the United States. Mr. Thiel also indicated that while he is a member of the board of

directors of the National Coalition Against Legalized Gambling, he was not representing that organization at the hearing.

Mr. Thiel testified that from a national perspective the Department's decision "...will have a significant impact on both the public discussion relative to the pari-mutuel greyhound racing industry but also discussions that are taking place across the country relative to the approval of the introduction of slot machines at pari-mutuel race tracks..." While stressing that he was not there to discuss whether or not slot machines at the race track should be legal, Mr. Thiel continued his testimony by stating that slot machines and greyhound racing in Rhode Island have become so linked that, in his opinion, dog racing is "little more than a loss leader for casino gambling." He concluded by requesting that the Department launch an independent investigation into the criminal allegations.

In response to Mr. Thiel's comments, Hearing Officer Savage stated that the Department views the allegations set forth in the indictments very seriously and is monitoring the matter very closely but Department policy prohibits disclosure of whether or not there is an ongoing investigation and/or comment on pending investigations. Hearing Officer Savage asked anyone at the hearing who had comments relating to the allegations in the indictment to place them on the record and the Department would take those comments into consideration. Hearing Officer Savage also clarified that the instant hearing was being held pursuant to R.I. Gen. Laws § 41-3.1-4 to consider information relevant to Lincoln Park's request for racing dates for 2004.

Several individuals testified in favor of Lincoln Park's request for race dates for 2004. Jenna Karlin, a representative for Local 217 of the Hotel and Restaurant Employees Union, testified that the union represents the leadouts who work with the dogs at Lincoln Park. Ms. Karlin explained that leadouts are the individuals who weigh the dogs, take them to the kennel

prior to the race, put them in the starting boxes and then bring the dogs back to the kennel after the race. Ms. Karlin testified that the leadout jobs are good jobs that pay a living wage with health benefits. The jobs help support many families and send them to college. Therefore it is in their best interest to have the race dates continue at the same level as prior years.

Mr. Joseph Walsh testified on behalf of the Rhode Island Greyhound Association in support of Lincoln Park's request for the race dates. Mr. Walsh stated that they had been racing since 1977 and wanted to continue. Mr. Walsh also stated that there were 14 kennels currently operating at Lincoln Park.

Ms. Jackie Motta, business agent for Local 334 of the Service Employees International Union which represents approximately seven hundred twenty three (723) employees in the audit, validation and mutuel departments of Lincoln Park, testified that it is very important to the union membership that the race dates be approved because employees, some of whom are single, need the jobs and health insurance.

Ms. Judith Stravato, recording secretary for Local 334 and an employee of Lincoln Park since 1982 testified that it was important for her and her fellow employees to see the business continue and asked the Department to think about them and what Lincoln Park means to them in making a decision regarding the race dates.

Upon inquiry from Hearing Officer Forte, counsel for Lincoln Park indicated that Lincoln Park has 820 employees. (That number does not include the additional non-Lincoln Park employees licensed and working at Lincoln Park.)

Those in attendance at the hearing were informed that the record would remain open until 4 p.m. on December 10, 2003.

On December 10, 2003, the Department received a letter dated December 9, 2003 from counsel for Lincoln Park which stated that no evidence was introduced in the record at the December 3, 2003 hearing that would affect the racing dates, and consequently, all three hundred forty (340) dates should be approved.

On December 10, 2003, the Department received a letter dated December 10, 2003 from Governor Donald Carcieri. At Lincoln Park's request, a copy of the Governor's letter dated December 10, 2003 was provided to Lincoln Park and Lincoln Park was given until 4 p.m. on December 12, 2003 to respond thereto. The Department received Lincoln Park's response to the Governor's December 10, 2003 letter before that deadline.

Governor Carcieri's December 10, 2003 letter indicated that he had publicly expressed concerns regarding the charges by a federal grand jury of illegal activity at Lincoln Park as reflected in the September 9, 2003 indictment filed by the United States Attorney in U.S. District Court. Further, the State of Rhode Island has a number of important connections with Lincoln Park including its status as a major employer in the State of Rhode Island and as an entertainment destination for thousands of people from Rhode Island and out-of-state. The racing and pari-mutuel betting license issued by the Department allows Lincoln Park to operate video lottery terminals ("VLTs"), subject to the approval of the Lottery Commission. The VLTs generate significant revenues to the State as well as Lincoln Park, making the State a virtual partner of that line of business. The letter further indicated that the Governor believes that the actions of the present owners of Lincoln Park have cast a cloud of uncertainty over the future of the facility which can only be remedied by a change in ownership. The Governor also wrote that such a transaction should occur at the earliest possible time and he did not believe it was in the best interests of the State or the public to allow Lincoln Park to continue its operations in an

unlimited time frame. Finally, he indicated he believed it would be appropriate to limit the number of racing dates initially approved and to require the licensee to come before the Department at some point in the future so the Department could determine whether there had been any change in the applicant's circumstances and approve additional racing dates as circumstances warranted.

Counsel for Lincoln Park in its December 12, 2003 letter sent in response to the Governor's December 10, 2003 letter stated that the sole matter before the Department is Lincoln Park's request for 2004 racing dates pursuant to R.I. Gen. Laws § 41-3.1-4 and there is "no competent evidence in the record to support the approval of any fewer than the 340 requested racing performances."

Lincoln Park's December 12, 2003 response also stated that Lincoln Park generates significant money for the State, employs hundreds of Rhode Islanders via well-paying, predominantly union jobs, with industry best benefits, provides business to hundreds of vendors, and generates \$5,000,000 to the state's general fund each year. Additionally, the letter stated that "[s]ince this Department's approval of the 340 racing performances for 2003, there has been no material change in operation at Lincoln Park that would warrant any change to the approval granted last year."

## **V. FINDINGS OF FACT**

- A. Lincoln Park is licensed as a dog racing facility pursuant to R.I. Gen. Laws § 41-3.1-1 *et seq.* and R.I. Gen. Laws § 41-9-1 *et seq.*
- B. On October 3, 2003, the Department received a letter dated September 30, 2003 from Mr. Craig Sculos , General Manager of Lincoln Park requesting 2004 race

dates consisting of three hundred forty (340) live greyhound racing performances over a period of two hundred ten (210) days.

- C. Lincoln Park requested and received approval for three hundred forty (340) live greyhound racing performances for each of the past five (5) years.
- D. The December 3, 2003 hearing on Lincoln Park's race dates request was advertised in the *Providence Journal* on October 29, 2003.
- E. A hearing on Lincoln Park's September 30, 2003 race dates request was held on December 3, 2003 at the Department.
- F. Lincoln Park is a significant employer in the state, employing eight hundred twenty (820) people (excluding individuals who are non-Lincoln Park employees) and providing its employees as well as non-Lincoln Park vendors, and other licensees associated with Lincoln Park with good jobs and health benefits.
- G. Lincoln Park's license to operate a dog racing facility allows it to operate VLTs, subject to approval by the Lottery Commission.
- H. Together the dog racing facility and VLTs generate significant revenue to both Lincoln Park and the State.
- I. The Department takes adjudicatory notice of the fact that on September 9, 2003, a federal grand jury indicted Nigel Potter, Chief Executive Officer of Wembley, plc; Daniel Bucci, then Chief Executive Officer at Lincoln Park; and the Burrillville Racing Association on several counts related to allegations of bribery. Thereafter both Mr. Potter and Mr. Bucci stepped aside from their respective positions pending the outcome of the criminal indictments.



- J. Criminal proceedings related to those indictments are currently pending in the United States District Court for the District of Rhode Island.
- K. There was no evidence introduced in connection with this matter that suggested that there is an imminent and ongoing threat to the public health, safety or welfare or the integrity of the day-to-day racing and/or pari-mutuel operation has been or is currently being compromised.
- L. The Department takes adjudicatory notice of the fact that Wembley, plc has publicly acknowledged that it is considering a possible sale and transfer of some or all of the assets of Wembley, plc, including the Lincoln Park facility.

## VI. DISCUSSION

The confluence of the above-referenced September 9, 2003 indictments which are pending in the United States District Court for the District of Rhode Island and the public announcement by Wembley, plc that it is considering the sale and/or transfer of Lincoln Park are significant, material facts and developments directly relating to Lincoln Park which were not in existence at the time Lincoln Park's 2003 racing dates request was considered and approved. Potential resolutions of either issue could have a significant impact on Lincoln Park, its employees, other licensees of Lincoln Park and the economy of the State of Rhode Island. Therefore, it is consistent with this Department's statutory charge and Mission Statement<sup>2</sup> that the Department continue to monitor developments related to both of these issues in connection with any determination as to the appropriateness of approval for racing dates during 2004.

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<sup>2</sup> The mission of the Rhode Island Department of Business Regulation is to assist, educate, and protect the public through the implementation and enforcement of state laws mandating regulation and licensing of designated businesses, professions, occupations, and other specific **activities while recognizing the need to foster a sound business environment.** (Emphasis added)

As previously indicated by the Department,<sup>3</sup> the standard for initiating emergency regulatory action against a licensee where criminal allegations have been made, is whether there is substantive evidence that there is an imminent and ongoing threat to the public health, safety or welfare, or specifically with respect to racing and athletics, whether there is evidence that the integrity of the gaming event is currently being compromised. Nevertheless, in the context of the proceedings currently pending before the Department where Lincoln Park is seeking approval of racing dates for 2004, it is appropriate and within the Department's discretion to bifurcate consideration of Lincoln Park's request for approval of racing dates because of the criminal indictments and the public acknowledgement that Wembley, plc is considering the possible sale and/or transfer of the Lincoln Park facility to an as yet undetermined buyer. This is necessary so that the Department can at appropriate times give due consideration to the facts and circumstances then in existence and relevant to the request for racing dates. This process will allow Lincoln Park to continue its current operation, thereby protecting the value and viability of the entity, while simultaneously allowing for periodic regulatory review of issues relevant to the racing dates request.

While R.I. Gen. Laws § 41-3.1-4(2) empowers the Department to “[f]ix and set the dates within which any dog track may be operated; provided, however, there shall be at least one hundred twenty-five (125) days annually of the operation,” that statute does not require that all of the race dates for any calendar year be fixed and set at the beginning of the calendar year; nor does it prohibit the Department from fixing and setting additional race dates from time to time during the year as determined appropriate in light of all of the facts and circumstances.

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<sup>3</sup> See Department press release of September 10, 2003, available at “[www.dbr.state.ri.us](http://www.dbr.state.ri.us)”.

## **VII. CONCLUSIONS**

- A. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 41-3.1-1 *et seq.*
- B. The Department has a duty to protect the public interest by fulfilling its statutory duties and its mission statement.
- C. R.I. Gen. Laws § 41-3.1-4(2) empowers the Department to “[f]ix and set the dates within which any dog track may be operated; provided, however, there shall be at least one hundred twenty-five (125) days annually of the operation[.]”
- D. R.I. Gen. Laws § 41-3.1-4(2) does not require that all of the race dates for any calendar year be fixed and set at the beginning of the calendar year; nor does it prohibit the Department from fixing and setting additional race dates from time to time during the year.
- E. The September 9, 2003 indictments of Mr. Nigel Potter, Mr. Daniel Bucci and Burrillville Racing Association are significant, material facts which were not in existence at the time Lincoln Park’s 2003 race dates request was granted.
- F. Similarly, the possible sale and/or transfer of some or all of the assets of Wembley, plc, in particular its Lincoln Park operation in Rhode Island, to an as yet undetermined buyer is a significant, material circumstance which was not in existence at the time Lincoln Park’s 2003 race dates request was granted.
- G. These material, significant facts and circumstances require that the Department closely monitor both the developments in and progression of the criminal proceeding as well as Wembley, plc’s efforts related to the possible sale and/or transfer of the Lincoln Park facility.

- H. In light of conclusions A-G above, it is appropriate that the Department bifurcate consideration of Lincoln Park's request for approval of racing dates for 2004 so that the Department can at appropriate times give due consideration to the facts and circumstances then in existence and relevant to the request for racing dates.
- I. The Department's regulatory monitoring of both the criminal proceedings and efforts by Wembley, plc to sell and/or transfer ownership of the Lincoln Park facility should not be construed to suggest that the Department currently has any evidence that there is an imminent or on-going threat to the public health, safety or welfare or that the integrity of the day-to-day operations at Lincoln Park have been or are currently being compromised.
- J. Any proposed sale and/or transfer of the Lincoln Park facility would require regulatory review and approval by the Department. That review and approval process would be the subject of a public hearing separate and distinct from the annual racing dates request hearing.

## **VIII RECOMMENDATIONS**

The undersigned Hearing Officers recommend as follows:

- 1. Lincoln Park's request for a live greyhound racing schedule for calendar year 2004 as set forth on Exhibit 1 be granted in part and continued in part for further consideration as follows:
  - A. Lincoln Park's request for racing dates for the period January 1, 2004 through April 30, 2004 be granted, with Lincoln Park granted approval for seventy (70) race dates (out of the 210 requested) with one hundred twelve (112) live greyhound racing performances (out of the 340 requested).

B. Lincoln Park's request for racing dates for the period May 1, 2004 through December 31, 2004 be continued for further public hearing, review and consideration by the Department until Thursday, April 15, 2004 at 10:00 a.m. at the Department, at which time the Department would consider all facts, circumstances and developments relevant to fixing and setting of the additional race dates requested for 2004 and approve such dates as are appropriate in the context of the facts and circumstances then in existence.

2. On or before March 30, 2004, Lincoln Park be required to provide the Department with a written report detailing (i) the status of the criminal proceedings pending in the United States District Court, including, but not limited to, copies of any orders entered by the Court setting forth anticipated dates for pretrial and trial; and (ii) the status of all efforts to market and transfer the ownership of the Lincoln park facility.

3. In the meantime, Lincoln Park be required to immediately report to the Department any material or significant facts, circumstances and/or developments related to the operation of Lincoln Park, including, but not limited to, changes in the status of or developments in the criminal proceedings pending in the United States District Court and/or efforts related to the sale and/or transfer of Lincoln Park.

Respectfully submitted by:

Mario R. Forte  
Hearing Officer

Neena Sinha Savage  
Hearing Officer

Date: December 24, 2003

### **ORDER**

I have read the Hearing Officers' Recommendations in this matter, and I hereby  
ADOPT/~~REJECT~~ the Recommendations made therein as an ORDER of this Department.

Dated: December 29, 2003  
4:50 p.m.

Marilyn Shannon McConaghy  
Director

### **CERTIFICATION**

I hereby certify that on the 29<sup>th</sup> day of December, 2003 a true copy of within document  
was mailed by facsimile and regular mail, postage prepaid, to the following:

John A. Tarantino, Esq.,  
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